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10
11 **UNITED STATES BANKRUPTCY COURT**
NORTHERN DISTRICT OF CALIFORNIA
12 **SAN FRANCISCO DIVISION**

13 In re:

14 **PG&E CORPORATION,**

15 **- and -**

16 **PACIFIC GAS AND ELECTRIC**
17 **COMPANY,**
18 **Debtors.**

- 19 ☐ Affects PG&E Corporation
20 ☐ Affects Pacific Gas and Electric Company
21 ☒ Affects both Debtors

22
23 ** All papers shall be filed in the Lead Case,*
24 *No. 19-30088 (DM).*

Case No. 19-30088 (DM)
Chapter 11
(Lead Case)
(Jointly Administered)

**FIRE VICTIM TRUSTEE'S OBJECTION
TO MOTION TO ALLOW / DEEM
TIMELY LATE FILING OF PROOF OF
CLAIM BY AGUSTIN AGUILERA
OROZCO, ARACELI HERNANDEZ,
SARAH AGUILERA, JACQUELINE
AGUILERA, BRAULIO AGUILERA,
AND SOCORRO OROZCO;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
AGUSTIN AGUILERA OROZCO IN
SUPPORT**

[Relates to Docket Number 13886]

Hearing: Only if requested

1 Cathy Yanni, in her capacity as the Trustee (the “**Trustee**”) of the Fire Victim Trust, by and
2 through her undersigned counsel, hereby submits this Objection to the *Motion To Allow / Deem*
3 *Timely Late Filing Of Proof Of Claim By Agustin Aguilera Orozco, Araceli Hernandez, Sarahi*
4 *Aguilera, Jacqueline Aguilera, Braulio Aguilera, And Socorro Orozco; Memorandum Of Points*
5 *And Authorities; Declaration Of Agustin Aguilera Orozco In Support* [Docket No. 13886] (the
6 “**Motion**”) filed on July 12, 2022 regarding the proof of claim numbered 109886 filed on May 25,
7 2023 (the “**Proof of Claim**”) on behalf of Agustin Aguilera Orozco, Araceli Hernandez, Sarahi
8 Aguilera, Jacqueline Aguilera, Braulio Aguilera and Socorro Orozco (collectively, “**Movants**”). In
9 support of this Objection, the Trustee respectfully states as follows:

10 **PRELIMINARY STATEMENT**

11 The Motion seeks to have the claims of six claimants deemed timely for the purpose of
12 administration by the Trust along with Fire Victims who filed their proofs of claim well over three
13 years before Movants. The Motion follows the form of earlier-filed late claim motions including
14 the primary reason for the delay in filing the Proof of Claim. As Movants’ assertion of excusable
15 neglect for their in filing the Proof of Claim is based on the fact that they were unaware of their
16 ability to file a proof of claim until recently, the Court should deny the Motion for the reasons cited
17 in the Court’s December 21, 2022 *Amended Order Denying Motions to Allow Late Claims* [Docket
18 No. 13377] (the “**Late Claim Order**”).

19 **RELEVANT BACKGROUND**

20 1. On January 29, 2019, PG&E Corporation (“**PG&E Corp.**”) and Pacific Gas and
21 Electric Company (“**Utility**”), as debtors and debtors in possession (collectively, “**PG&E**” or the
22 “**Debtors**”), commenced with the Court voluntary cases under chapter 11 of the Bankruptcy Code
23 (the “**Chapter 11 Cases**”). The Reorganized Debtors filed the Chapter 11 Cases to address the
24 billions of dollars of damage and loss relating to the devastating 2015, 2017 and 2018 California
25 fires and to provide compensation to wildfire victims.

26 2. On March 14, 2019, the Debtors filed their schedules of assets and liabilities. By
27 Order dated July 1, 2019, the Court established October 21, 2019 (the “**Bar Date**”) as the last date
28 to file proofs of claim in the Chapter 11 Cases [Docket No. 2806] (the “**Bar Date Order**”). By

1 Order dated November 11, 2019, the Court extended the Bar Date to December 31, 2019 (the
2 “**Extended Bar Date**”) for unfiled, non-governmental Fire Claimants [Docket No. 4672].

3 3. The Debtors provided a well-publicized notice of the Extended Bar Date – the
4 second notice provided to Fire Victims of the claims bar date – and coordinated with Official
5 Committee of Tort Claimants for the appointment of a Claims Representative who designed and
6 implemented with his team an expansive outreach effort designed to identify, locate, and assist Fire
7 Victims who were eligible to file claims but failed to do so by the original bar date.

8 4. As a result of the Court’s careful consideration of this issue and the thoughtful
9 manner in which the Debtors redoubled their efforts to reach additional Fire Victims, more than
10 82,000 claimants, some of whom suffered unfathomable losses, filed their claims in a timely
11 manner.

12 **OBJECTION**

13 5. Movants assert that their long delay in filing the Proof of Claim was reasonable
14 because they did not discover they needed to file a proof of claim until after the Extended Bar Date
15 and only recently contacted and retained counsel. As the Court noted in the Late Claim Order,
16 “[d]ue process requires notice of the opportunity to file a claim. That was provided here and
17 generally to thousands of Wildfire Claimants. Due process does not require the awareness of the
18 type of claim that might have been filed.” Late Claim Order at 6:28-7:4.

19 6. To the extent that the Movants assert that the fact that English is not their primary
20 language also contributed to their delay in filing the Proof of Claim, this Court has already ruled on
21 the adequacy of the notice provided to claimants in this case.

22 **Application of Pioneer Factors**

23 7. In *Pioneer Inv. Services Co. v. Brunswick Associates Ltd. Partnership*, the Supreme
24 Court applied the majority of what was then the Ninth Circuit test for determining whether a failure
25 to timely file a proof of claim was due to excusable neglect: (1) whether granting the delay will
26 prejudice the debtor; (2) the length of the delay and its impact on efficient court administration; (3)
27 whether the delay was beyond the reasonable control of the person whose duty it was to perform;
28 and (4) whether the creditor acted in good faith. *Pioneer*, 507 U.S. at 395, 113 S. Ct. at 1498.

1 **Deeming Movants' Late Claims "Timely" Will Prejudice the Trust**

2 8. The first consideration in determining whether a late claim filing was the result of
3 "excusable neglect" under *Pioneer* is the danger of prejudice to the debtor. This factor is irrelevant
4 in the present case with respect to the Debtors because the Trust has taken the place of the Debtors
5 with respect to Fire Victim Claims. As noted in the Late Claim Order, "the impact on
6 administration is more than de minimis and would prejudice the FVT." Late Claim Order at 6:14-
7 15.

8 **The Length of Movants' Delay is Extreme and Negatively Impacts Trust Administration**

9 9. The second consideration under *Pioneer* is the length of delay and its potential
10 impact on judicial proceedings. Movants filed the Proof of Claim more than 40 months days after
11 the Extended Bar Date. The Trust has a limited fund from which to pay all Fire Victim Claims and
12 cannot finally determine how much it can pay on account of any Fire Victim Claim until it
13 adjudicates *every* Fire Victim Claim.

14 10. As of July 14, 2023,¹ the Trust had issued Determination Notices to 97% of all
15 claimants who have submitted claims questionnaire to the Trust, awarding nearly \$17.8 billion to
16 these claimants. Nearly \$10 billion has been paid to holders of Fire Victim Claims as of July 14,
17 2023.

18 11. The continued addition of claims to the Fire Victim Trust would prevent the Trust
19 from allocating its limited funds and further extends the time that claimants who timely filed their
20 Fire Victim Claims must wait for final payments, thus delaying the administration of Fire Victim
21 Claims and prejudicing those who hold timely filed Fire Victim Claims with further delay. The
22 length of Movants' delay and the impact of a more than three-year filing delay on the final payment
23 of timely filed Fire Victim Claims weighs heavily against deeming Movants' claims timely.

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27 ¹The latest statistics can be found on the Fire Victim Trust website at
28 <https://www.firevictimtrust.com>. The Trust will update the program statistics again on or about
July 31, 2023.

1 **Timely Filing Proofs of Claim was not Beyond Movants' Control**

2 12. The third *Pioneer* factor, whether the delay was beyond the late claimant's control,
3 also weighs against granting the relief requested in the Motions. As explained above, the Motion
4 does not provide any basis for a finding of excusable neglect. The description of Movants'
5 circumstances in the Motion fail to explain what prevented them from filing the Proof of Claim
6 until May, 2023. The third *Pioneer* factor therefore must also be decided in favor of the Trust.

7 **Even Without Bad Faith, Equity Does Not Favor Movants Over Other Fire Victims**

8 13. The Trustee does not believe that Movants lack the good faith that comprises the
9 final consideration listed by the *Pioneer* court, but it does not appear that Movants were prevented
10 from filing the Proof of Claim earlier by any circumstances.

11 14. As is evidenced by overwhelming number of late claim motions filed over the last
12 several months, allowing the Proof of Claim to be deemed timely filed without extenuating
13 circumstances would encourage other latecomers to file similar motions to the detriment of Fire
14 Victim who have already been waiting years to learn how much of their claims can be paid.

15 15. For the foregoing reasons, Movants fail to meet their burden for establishing
16 "excusable neglect" for filing the Proof of Claim more than three years after the Extended Bar
17 Date. The Proof of Claim should not be deemed timely for the purpose of administration by the
18 Trust.

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CONCLUSION

The Trustee respectfully requests that this Court deny the relief requested in the Motion and grant the Trust such other and further relief as may be just.

DATED: July 25, 2023

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